Jose A. Abarca (12762)
Nicolas C. Wilde (15768)
ARMSTRONG TEASDALE LLP
201 S Main Street, Suite 750
Salt Lake City, UT 84111
Telephone: (801) 209-9769
jabarca@atllp.com
nwilde@atllp.com

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

LARADA SCIENCES, INC., a Delaware Corporation, Plaintiff, v. PEDIATRIC HAIR SOLUTIONS CORPORATION, a North Carolina Corporation, et al. Defendants.	**OPPOSITION TO SHORT FORM DISCOVERY MOTION** Case No. 2:18-cv-00551-RJS-JCB Chief Judge Robert J. Shelby Magistrate Judge Jared C. Bennett

The Court should deny Plaintiff's wholly meritless Motion and award Defendants their costs.

I. The Plain Text of the Protective Order Precludes Washburn's Designation as a Technical Advisor

A protective order "governs information produced in [an] action, designating information into protective categories such as Confidential Information – Attorneys Eyes Only and Confidential Information." *Powerteq LLC*, 2019 WL 6682395, at *1. "It also classifies individuals who are authorized and not authorized to review the designated information." *Id*.

On March 4, 2019, the Court entered a Stipulated Protective Order that provided, in relevant part: "[t]he term TECHNICAL ADVISOR shall refer to any person who is not a party

to this action and/or not presently **employed** by the receiving party . . . ."[1] (ECF No. 44 at 5 (emphasis added).) "Under the Protective Order terms, parties may designate any person as a Technical Advisor if certain conditions are met." *Powerteq*, 2019 WL 6682395 at *1. "To qualify as a Technical Advisor [Washburn] **cannot be a party** to the action, [or] **an employee** of" Larada. *Id*. (bold added). Washburn is not just an employee of Larada. He, as a VP, oversees "product development" and "product design" for Larada. (*See* ECF No. 134-1 at 1.) This makes him especially situated to take positions directly harmful to PHS should he be allowed to inspect the FloSonix device. The plain text of the Protective Order compels the Court to DENY Larada's Motion.

II. The Court Should Award Defendants Their Costs

In its Proposed Order, Larada wrote: "[p]ursuant to Rule 37 . . . the Court hereby Grants Plaintiff['s] . . . Motion . . . ." (ECF No. 134-2 at 1.) Larada effectively sought an order from this Court compelling inspection of the FloSonix device. Under Rule 37(a)(5)(B), "[i]f the motion [to compel] is denied, the court . . . must, after giving an opportunity to be heard, require the movant . . . to pay the party . . . who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust." "A request for discovery is 'substantially justified' under Rule 37 if reasonable people could differ on the matter in dispute." *Entrata*, 2018 WL 5470454, at *7. Reasonable people cannot differ here. The plain

[1] Larada's counsel was well-aware of the Protective Order. On April 8, 2021, he sent an email to Defendants' counsel, "[a]ttached . . . the signed protective order disclosure agreement[] for David Washburn," and "note[d] that . . . Washburn is a current Larada employee . . . ." (Attachment A). Washburn signed the Disclosure Agreement on 3/30/21 wherein he represented that he had "read, underst[ood], and agree[d] to comply with and be bound by the terms of the Protective Order." (Attachment B at 29.)

text of the Protective Order makes clear that Larada's Motion is wholly meritless.

DATED: June 4, 2021.

ARMSTRONG TEASDALE LLP

/s/ *Jose A. Abarca*
Jose A. Abarca
Nicolas C. Wilde

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that that on June 4, 2021, I caused a true and correct copy of the foregoing to be served via CM/ECF on the following:

Peter Stasiewicz (IL No. 6290832) *(pro hac vice)*
ARCTURUS LAW FIRM
211 West Wacker Drive # 323
Chicago, Illinois, 60606
tel: (312) 957-6194
fax: (312) 489-8307
pete. stasiewicz@arcturuslaw.com

Douglas C. Smith
LEWIS BRISBOIS BISGAARD & SMITH LLP
6550 S MILLROCK DR STE 200
SALT LAKE CITY, UT 84094
(801)562-5555
Email: douglas.smith@lewisbrisbois.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

/s/ Shelby K. Irvin